



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 28, 1993

Mr. Steven C. Copenhaver
Attorney at Law
Walsh, Judge, Anderson, Underwood
and Schulze, P. C.
6300 La Calma, Suite 200
P. O. Box 2156
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OR93-366

Dear Mr. Copenhaver:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 19596.

The Corrigan-Camden Independent School District (the "district") received an open records request for "an itemized copy of the total costs and attorney's fees statement . . . [from] the law firm of Walsh, Judge, Anderson, Underwood, & Schulze, P.C., or any other law firm, for representation in" a specific lawsuit. You claim that the requested statements are excepted from required public disclosure by sections 3(a)(1), 3(a)(3), and 3(a)(7) of the Open Records Act.

You contend that the billing statements are excepted from disclosure by section 3(a)(3) because they directly pertain to pending litigation to which the district is a party. To secure the protection of section 3(a)(3), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation. Open Records Decision Nos. 551 (1990); 452 (1986). Based on your representation that the litigation is ongoing, this office agrees that the district may withhold at this time¹ the detailed descriptions of legal services performed. You have not demonstrated, however, that the dollar amounts of the attorney fees or the listings of expenses "relate" to the legal

¹We note that the applicability of section 3(a)(3) ends once the opposing parties in the anticipated litigation have seen or had access to any of the information, Open Records Decision Nos. 349, 320 (1982), or the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

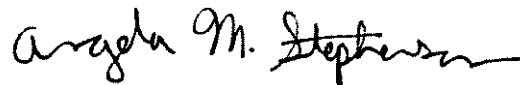
issues in the litigation. We therefore conclude that you have not met your burden under section 3(a)(3) with regard to this information.

We next consider whether the amount of the attorney fees and the expense listings fall within the protection of the attorney-client privilege. Citing Open Records Decision No. 304 (1982), you contend that the district may withhold this information pursuant to the attorney-client privilege as incorporated in section 3(a)(1) of the act, which protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision."

Although Open Records Decision No. 304 discussed the attorney-client privilege in the context of section 3(a)(1), this office has since determined that the attorney-client privilege is more properly deemed to be an aspect of section 3(a)(7) of the act, which protects, *inter alia*, "matters in which the duty of . . . an attorney of a political subdivision, to his client, pursuant to the Rules and Canons of Ethics of the State Bar of Texas are prohibited from disclosure." See Open Records Decision No. 574 (1990) (copy enclosed). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and confidential attorney-client communications. *Id.* Accordingly, these two classes of information are the only information contained in attorney billing statements that may be withheld pursuant to the attorney-client privilege. See Open Records Decision No. 589 (1991) (copy enclosed) *overruling to extent of conflict* Open Records Decision No. 304 (1982). Consequently, section 3(a)(7) does not except from public disclosure the total billed hours and costs for the attorneys' services and the expense listings, as this information on its face does not reflect legal advice given to the client or confidential communications. The district therefore must release this information.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Angela M. Stepherson
Assistant Attorney General
Opinion Committee

AMS/RWP/jmn

Ref.: ID# 19596

Enclosures: Open Records Decision No. 574, 589

cc: Mr. Daniel L. McCall
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(w/o enclosures)